STATE OF MICHIGAN

COURT OF APPEALS

WERNER SCHIENKE and SYLVIA SCHIENKE,

Plaintiffs-Appellees,

v

MARIE BENNETT, WALLACE DEHATE, RAY DEHATE, ELIZABETH WARNER, KENNETH A. WARNER, and THOMAS J. WARNER,

Defendants.[1]

UNPUBLISHED
February 12, 2004

No. 242386
Macomb Circuit Court
LC No. 01-001885-CH

Before: Schuette, P.J., and Murphy and Bandstra, JJ.

PER CURIAM.

Plaintiffs brought this action claiming adverse possession of a lake front lot. The lot was subject to a beach use easement for the benefit of plaintiffs and other neighbors in the surrounding development. Plaintiffs were granted fee simple title in a default judgment on their claim, the defendants having failed to respond to the action. Some time later, appellants, who are neighbors who had the same easement right to the property as plaintiffs, moved to intervene seeking to have the default judgment set aside. The trial court denied the motion to intervene and opined that, even if intervention were allowed, the default judgment should not be set aside. Appellants appeal from both of those decisions as well as the trial court's denial of a motion to

[1] Defendants are not parties to this appeal. The appellants in this case – Sharon Korzetz, Robert Knowles, Theresa Knowles, Terry Russell, Janet Russell, Irene Schuster, John Heiler, Robert Gruenwald, Robert Radomski, Carol Nehra, John Reidle, Sharon Reidle, Helen Ristau, James Svenson, Fred Halas, Doreen Layman-Halas, Ming Chen, Andrew Stark, Theresa Stark, Catherine Rice, Jeffery Lonskey, W. McCarthy, Michael Kubala, Kevin LaLande, Melanie LaLande, Rick Bohlinger, Nora Bolinger, Tom Taylor, Katherine Taylor, Jerry Mausolf, Bonnie Mausolf, Ronald Larson, Donna Larson, Mark Hodorek, Dean Rager, Kurt Kendall, Sunita Kendall, Jerry Hawkins, Joseph Tendiglia, and Donna Tendiglia – are individuals who unsuccessfully moved the trial court for intervention, the setting aside of a default judgment in favor of plaintiffs against defendants, and for consolidation of this matter with another pending case. These individuals will be referred to hereinafter collectively as "appellants."

consolidate this action with a similar one involving a similar parcel of property in the area. We reverse and remand for further proceedings.

We review the trial court's decision to deny intervention to appellants for an abuse of discretion. *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 761; 630 NW2d 646 (2001). The trial court here abused its discretion through a mistake of law.

MCR 2.209 provides, in relevant part:

> **(A) Right of Intervention.** On timely application[2] a person has a right to intervene in an action:
>
> * * *
>
> (3) when the applicant claims an interest relating to the property . . . which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The rules of intervention should be liberally construed in favor of intervention in cases like this, where there is inadequate representation of the interest of the intervention applicant. *Vestevich, supra* at 762. Of similar import is the necessary joinder rule which provides that "persons having such interest in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties," MCR 2.205(A), and, if they have not been made parties "the court shall order them summoned to appear in the action," MCR 2.205(B).

Plaintiffs do not dispute that appellants share equally with them in the same beach use easement right with respect to the disputed parcel. Under MCR 2.209(A)(3), appellants' rights to use the disputed parcel of property under the easement certainly at least "may" be impaired or impeded "as a practical matter" by plaintiffs' securing fee simple title through their adverse possession action. Thus, appellants had a "right to intervene." MCR 2.209(A). Further, appellants interest in the property was of such a nature that they should have been joined as necessary parties under MCR 2.205, to allow the trial court to render "complete relief" as to the ownership and use of the property by all neighbors who had shared an interest in it. Accordingly, the trial court erred in denying appellants the right to intervene to contest the default judgment.

We further find an abuse of discretion in the trial court's decision to deny appellants' motion to set aside the default. See *Amco Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 94; 666 NW2d 623 (2003). The trial court's reasoning in this regard was premised mainly on its prior incorrect decision that appellants have no right to intervene. Had appellants

---

[2] There is no claim by plaintiffs that appellants' attempt to intervene, apparently occurring as soon as they learned of this action, was not timely.

been allowed to intervene, they certainly would have contested plaintiffs' claim of adverse possession, notwithstanding the named defendants' failure to respond for that purpose. The factual disputes between plaintiffs and appellants regarding plaintiffs' use of the disputed parcel of property over the years, in contrast to the use by other easement holders, would need to be determined. If the facts are as appellants alleges them, the default judgment granting plaintiffs fee simple title to the disputed parcel would be manifestly unjust. Further, appellants having been denied the right to contest the default judgment by being included in the litigation, good cause sufficient to set aside the default would exist. See, generally, *Lindsley v Burke*, 189 Mich App 700; 474 NW2d 158 (1991).

The trial court did not fully consider appellants' motion to consolidate this action with another regarding a similar dispute over similar property, largely because of its decisions against appellants on the motions to intervene and to set aside the default judgment. Further, the record before us is incomplete with respect to the degree of similarity between the two actions and we decline to review this issue. See, e.g., *Lowman v Karp*, 190 Mich App 448, 454; 476 NW2d 428 (1991); see also *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98-99; 494 NW2d 791 (1992). Certainly, the trial court may reconsider this issue in light of our determinations that appellants should be allowed to intervene and that the default judgment granting plaintiffs fee simple title to the property should be set aside.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Bill Schuette
/s/ William B. Murphy
/s/ Richard A. Bandstra